No. 10387.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRIEDRICH WALTER BERGMANN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR THE UNITED STATES OF AMERICA.

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PAUL P. O'BRIEN,
CLERK

CHARLES H. CARR,
United States Attorney,
JAMES L. CRAWFORD,
WM. W. WORTHINGTON,
Assistant U. S. Attorneys,
United States Postoffice and
Courthouse Bldg., Los Angeles (12),
Attorneys for Appellee.

Parker & Baird Company, Law Printers, Los Angeles

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BRIEF FOR THE UNITED STATES OF AMERICA.

Opinion Below.

The reported Opinion of the District Court appears in 47 F. Supp. 765, and its Findings of Fact and Conclusions of Law appear in the Record, pages 27-31.

Jurisdiction.

Judgment of the District Court in the above case here on appeal was entered November 30, 1942 [R. 32]. The jurisdiction of this court rests upon Section 128 of the Judicial Code, 28 U. S. C. A. (1940 ed.), 225.

Judgment in the District Court and the Statute Under Which the Judgment Was Entered.

The judgment of the District Court from which this appeal is taken orders the cancellation of appellant's certificate of naturalization. This judgment was entered in

an action instituted by the United States of America under Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (U. S. C. A., Title 8, Section 738). This Act and Section confers jurisdiction upon the District Courts to entertain proceedings for cancellation of certificates of naturalization alleged to have been obtained by fraud or illegality.

The Opinion of the District Court.

The District Court held that appellant's certificate of naturalization had been obtained by fraud and ordered appellant's certificate of naturalization cancelled. The fraud consisted in the fact "that when appellant was admitted to citizenship on April 9, 1937, he was not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and that appellant swore falsely when he took the oath of renunciation and allegiance, for he bore no fealty to the United States and did not renounce allegiance and fidelity to The German Reich."

Findings of Fact.

The court, sitting as a Court of Equity, found: Appellant upon taking the oath of allegiance[1] on April 9, 1937, was granted Certificate of Naturalization No. 4262178 on the same day, and it was issued by the Clerk; that the appellant upon taking such oath was, by order of the

[1]"I hereby declare on oath that I absolutely and entirely renounce and adjure any allegiance and fidelity to foreign prince, potentate, state or sovereignty, and particularly to The German Reich of which I have heretofore been a citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic; that I will bear true faith and allegiance to same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

"In acknowledgment whereof I have hereunto affixed my signature."

court, admitted to citizenship [R. 28-29]; that the representations made by appellant in his petition for naturalization that he was attached to the principles of the Constitution at the time of the filing of the petition were false and fraudulent in that the appellant was not in fact attached to the principles of the Constitution, and that the representations made in his petition for naturalization at the time of its filing that he intended to renounce absolutely and forever all allegiance and fidelity to The German Reich were false and fraudulent in that he did not intend so to do [R. 29]; that the representations made by appellant in his oath of allegiance that he intended to renounce and abjure all allegiance and fidelity to The German Reich were false and fraudulent in that he did not in fact so intend; that the representations made by appellant in his oath of allegiance that he intended to support the Constitution and the laws of the United States against all enemies foreign and domestic were false and fraudulent in that he did not so intend; and that the representations made by appellant in his oath of allegiance that the oath was taken without any mental reservation or purpose of evasion was false and fraudulent in that he did take the oath with such mental reservation and purpose of evasion [R. 30].

Questions Presented.

1. Whether there is substantial evidence to support the finding of the trial court that the defendant procured his certificate of naturalization by fraud.

2. Whether the fraud disclosed by the evidence is fraud within the meaning of Section 338 of the Nationality Act of 1940.

ARGUMENT.

I.

The Appellate Court Will Not Set Aside the Findings of the Trial Court in an Equity Proceeding if the Findings Are Predicated Upon Conflicting Testimony Given in Open Court, as Such Findings Are Presumptively Correct, Unless a Serious Mistake of Fact or Law Appears.

The entire case of the Government is based upon written statements of the defendant and one other witness, and oral testimony given in open court. The trial court, therefore, had the benefit of the witnesses personally appearing before it.

Rule 52(a), F. R. C. P.;

Oregon Mortgage Company v. Renner, 96 F. (2d) 429 (9th Cir.);

Clements v. Coppin, 61 F. (2d) p. 557;

U. S. v. United Shoe Mach. Co., 247 U. S. 32;

Why Corp. v. Super Ironer Corp., 128 F. (2d) 540.

II.

The Evidence Amply Sustains the Findings of Fact Made by the Trial Court.

The Government's case and the trial court's findings are based upon testimony of positive action and declarations of appellant, the sum total thereof not only sustaining but compelling the conclusion that appellant was not attached to the principles of the Constitution and well-disposed to the good order and happiness of the United States and that appellant swore falsely when he took the oath of renunciation and allegiance. Such is fraud within the meaning of the Nationality Act of 1940, Section 338, 54 Stat. 1158, U. S. C. A. Title 8, Section 738; *Maney v. U. S.,* 278 U. S. 17; *U. S. v. Ness,* 245 U. S. 319. The case for the defense primarily, as it must, rests upon negative, not positive, evidence.

Government's Documentary Evidence.

This consists of Government's Exhibits 1, 2, 3 and 4, being respectively Petition or Application for Naturalization, Statement of Appellant of May 5, 1942, Statement of Mrs. Charlotte Miller of April 20, 1942, and a letter dated June 7, 1939, by the appellant to Rollin J. McKinney.

In so far as the Petition for Naturalization is concerned, Question No. 26 therein is as follows:

> "If necessary, are you willing to take up arms in defense of this country?" [R. 227.]

It is to be noted from the testimony of Mr. Barber [R. 222-226] that under the word "Yes" in answer to Question No. 26, is an ink mark of some kind. There were only the word yes and the ink mark on the line left for the answer to Question No. 26 when presented to Mr. Barber, the Immigration official. This ink mark under the word "Yes" caused Mr. Barber to question the answer and on being informed that the appellant was not willing to take up arms in an attack upon Germany and desired that qualification to be included in his answer to Question No. 26, it was thereupon inserted in Mr. Barber's handwriting as part of such answer, Mr. Barber at such time advised the appellant that such a reservation would prevent his being admitted to citizenship [R. 618] and thereafter continued the examination of the appellant for approximately fifteen minutes, at the end of which time appellant stated that he did not wish the qualification to be a part of his answer to Question No. 26 [R. 225].

As to Government's Exhibit No. 2, statement of appellant, signed May 5, 1942, particular attention is directed to the following:

> "I am disguested with the white man for getting into this war. The white people should realize that east is east, and west is west, and north is north, and south is south; they should not go beyond their rights. Whites should attend their own business [R. 249] * * * As an American citizen, I would defend this country wherever the United States flag flies. It is not correct to be sent outside the borders of the United States to fight under a foreign flag. I want to see the end of the Hitler regime in Germany. I

want to see Hitler licked, but not the German people. I have a heart for the German people. There must always be a Germany. A country of 80 million people has a right to have land enough to sustain them. The colonies she once possessed were nothing but barren and desert land, with the possible exception of German East Africa. Germany should never be split up; it will lead only to political unrest and war in Germany. We are fighting Hitler and not the German people. All American citizens have a duty after the war to help Germany and other countries oppressed by dictators." [R. 250.]

At this point we particularly desire to call to the court's attention the examination of the appellant by the trial judge [R. 589], that the term "Heil Hitler" is never used by even the Nazis in foreign countries as a greeting, and the obvious discrepancy between the appellant's statement that east is east, and west is west, * * * and that white people should realize that fact and should not go beyond their rights, and * * * should attend to their own business, and his subsequent statements that a country of 80 million people (referring to Germany) should have the right to have land enough to sustain them [R. 573-581].

The statement of Mrs. Charlotte Miller requires no comment [R. 611].

Government's Exhibit 4, being the letter of June 7, 1939, signed by appellant, is diametric to the protestations of appellant that he intended making public gifts [R. 583-586].

Summation of Oral Declarations by Appellant to Sustain the Lower Court's Findings.

As early as 1929 [R. 210], the defendant claimed to have served in the German Army in World War I; and in 1936 [R. 214] defendant stated the United States would be sorry if she interferred with Germany, and that he had sent his money first to Canada, then to Australia for protection. He reiterated the statement as to being in the German Army to five other witnesses [R. 44; 102; 117; 149; 161] during the period 1940-1941, to two of whom he amplified his statement by stating that he wanted to fight for Germany again [R. 102; 159].

In April, 1939 the appellant advised Mrs. Pelliter [R. 61] not to buy United States bonds nor invest any money in them at all (this was stated on several succeeding days); that such bonds were not safe.

In 1940 appellant stated [R. 98] that he felt like going back to Germany and helping whip England. During this year he likewise stated that Hitler was O. K. and could run the United States Government better than it was then being run, and that Hitler could have everything he needed from Bergmann, and that if Hitler came over here, he would show us how to run the Government, and that he, Bergmann, was Hitler, Junior, or Hitler No. 2; that he intended to sell his property, and after the trouble he would get rid of what he had here and go back to the old country and live like a white man [R. 112-115, 119, 546]; that he sent $1,500 to Germany; that that s.—b.—— Roosevelt would get his, and that when the United States was taken over, things could be regulated, and that at the right time Germany would easily take over, and that the system of government in Germany was better than in

the United States; and that this g.—d.—— religion would have to go [R. 135-137]; that he believed Hitler to be O. K. and misrepresented by the press and the Jews; that Germany after the war would be the clearing house for world goods, and would determine and fix the quotas and needs of other countries; that Hitler in reality was a good, kind, Christian gentleman, not wanting to harm anybody, only wanting to do good [R. 174-175].

During this period he stated to a still further witness that Hitler was a wonderful man, and the greatest genius to mankind the world had ever known, and would go down in history as such [R. 183].

In 1941 appellant attacked the present administration stating he did not like the Jewish influence on the administration; had in his possession a photograph of a damaged British warship in New York Harbor, the photograph having been received from the German Consul; expressed admiration for Hitler as a very great man with fine principles, and declared admiration for Nazi principles; gave typical Nazi salute and said "Heil Hitler;" [R. 44-48; 147-151], and that Hitler was doing a great work [R. 155], and that after this thing was all over, the Germans would really have the world at their feet [R. 150].

To another witness, during this same period, appellant stated that he was a Nazi; that he was opposed to lend-lease to Great Britain, thought the Japanese nice people and that they had to attack the United States; that Americans misunderstood Hitler who was a very nice man [R. 74-79].

To two witnesses he stated, during this period, that we —Hitler—will use gas; and that he was going back to Germany as soon as the war ended, and was going to stay there [R. 91-92, 212].

Appellant *admits* that he stated, as testified to by witnesses, that he used the words, "I am a Nazi." [R. 493.]

In 1941 appellant stated that Hitler's plan for the world was a good one; likewise his plan for the Jews; that they should be run out as they were getting control [R. 159], and that he was ashamed of his United States citizenship and felt like having it cancelled; that it was no worse for Germany to kill children than was the Versailles Treaty [R. 125].

During this same period, 1941, he stated that Roosevelt was a dirty, double-crossing s. b.; that he had double-crossed the German people and sold them out when he passed the lend-lease bill permitting England to obtain goods from this country [R. 184]; that he had his citizenship papers taken out as a business protection [R. 185], that he would bless the date when he could tear them up and return to Germany to live like a white man [R. 186]. He did not think the Japanese attack at Pearl Harbor was a shady deal, that it was inevitable; that they were entitled to own the islands and territory in that portion of the country, and that this government had stolen the Philippine Islands from the Spanish Government, and that rightfully that portion of the world belonged to the yellow race and he was glad to see them take it [R. 186-187].

He expressed jubilation at the sinking of the battleships REPULSE and PRINCE OF WALES, explaining the tonnage of these ships, the amounts and sizes of the guns they carried, and the crews [R. 193]. He *admits* he stated Hitler was O. K. and was more capable of running the government than the way our government functions at this time [R. 546]. Appellant *admits* he does not want the German people defeated [R. 541].

Effect of Decision in U. S. v. Schneiderman, 87 L. Ed. 1249, on Instant Case.

The Seventh Circuit in *U. S. v. Krause,* decided June 30, 1943, in referring to the *Schneiderman* decision says:

> "* * * There the majority of the Court held that the Government had not sustained the burden of proving that Schneiderman was not attached to the principles of the Constitution of the United States when his certificate of citizenship issued, ruling that very active membership and participation in an organization alleged but not admitted by the majority of the members of the Court to advocate the overthrow of the Government by force and violence did not constitute such opposition to the principles of the Constitution as to justify holding that a member could not truthfully take the oath to uphold the principles of that Constitution. It stresses the fact that the Government relied solely upon evidence relating to the Party, and introduced none as to Schneiderman himself apart from his party activities. 'Apart from his membership in the League and the Party the record is barren of any conduct or statement on petitioner's part which indicates in the slightest that he believed in and advocated the employment of force and violence, instead of peaceful persuasion, as a means of attaining political ends.' The Court recognizes that citizenship can be revoked 'on legal grounds,' thereby upholding the validity of section 15, 8 U. S. C. A. section 738, which provides for such revocation. It assumes without deciding 'that * * * a certificate of naturalization can be set aside under section 15 as "illegally procured" because the finding as to attachment would later seem to be erroneous. * * *' We are convinced that in the case at bar the Government did sustain the burden of proving

> that appellant's conduct and expression in later years were opposed to the principles of the Constitution. Applying the long line of cases which the Court does not overrule by its decision in the Schneiderman case, we are further convinced that such conduct and expression may be relied upon to show that the oath of allegiance was taken with such mental reservations as to render it wholly nugatory, and that being the case, that the certificate of citizenship issued in reliance thereon was illegally procured."

In the *Krause* case, the appellant testified that several months after December 7, 1941, he had attempted to enlist in the Coast Guard. In commenting on this fact, the Circuit Court said, "Obviously the Court was not impressed by appellant's assertions of his efforts to enlist in the Coast Guard in August, 1942, several months after the current proceeding had been started to revoke his citizenship." Obviously Judge Yankwich was not impressed with apparent acts of patriotism, bond buying, and statements to Mrs. Mason by appellant subsequent to December 7, 1941.

The sole precedent that can be derived from Mr. Justice Murphy's opinion, which was not already established law, is that mere membership in the Communist Party, as that party was described in the record, does not *ipso facto* constitute a lack of attachment to the principles of the Constitution. There is no question of fraud as distinguished from lack of attachment in the *Schneiderman* case, and it is clear that irrespective of the opinions in the trial and circuit courts, the Supreme Court decision was not based on fraud. Mr. Justice Murphy says, at the end of paragraph 4 of his opinion, "The Government proceeds here not upon the charge of fraud but upon the

charge of illegal procurement;" thus indicating a distinction. The Court does not deny that lack of attachment to the principles of the Constitution would be illegal procurement; it simply holds that membership by one in the Communist Party is not *per se* an illegality as meant by the denaturalization statute.

Of course the principle of clear and convincing proof is but a restatement of previous decisions by the same court.

If there was any doubt that a distinction was noted between fraud and lack of attachment by Justice Murphy, then the opinion of Justice Douglas concurring dispels such doubt. He devotes most of his opinion to that distinction in order that by eliminating fraud, he can rationalize his thesis of *res judicata* for denaturalization proceedings.

In the instant case the only contention on the part of the Government is that appellant committed a fraud in obtaining his United States citizenship in that he reserved allegiance to Germany at the time he took his oath of citizenship [R. 43]. Looking at the allegations in the present complaint, there is a charge of misrepresentation as to his attachment to the principles of the Constitution, whereas in the *Schneiderman* case no misrepresentation was alleged or considered. What was considered was the fact of attachment. Unless the many comments, which are merely *obiter dicta,* by Justice Murphy apply to fraud and non-allegiance to the United States, the *Schneiderman* decision has no bearing on the instant case. That such *dicta* does not apply is made certain by Justice Douglas' concurring opinion, for without his concurring opinion, Justice Murphy's opinion would not be that of the majority, and it is limited or qualified by Justice Douglas'.

This analysis of the majority opinion in the *Schneiderman* case is buttressed by the disjunctive language of the statute authorizing the United States Attorney to institute proceedings for cancelling certificates of naturalization as follows:

> "It shall be the duty of the United States District Attorneys * * * to institute proceedings * * * for the purpose of cancelling the certificate of citizenship on the ground of fraud OR on the ground that such certificate of citizenship was illegally procured." Sec. 738 Nationality Act of 1940, 54 Stat. 1158, Title 8 U. S. C., Sec. 738.

Analysis of Appellant's Points.

Appellant's Point I.

"The Evidence Is Insufficient to Establish Fraud."

A. "The Rule of Construction Which Obtains in a Denaturalization Proceeding Is Different Than in a Naturalization Proceeding."

The Government concedes that the law requires that the Government's proof be clear and convincing, but it most emphatically denies appellant's contention that the rule of construction in a denaturalization proceeding is different from that in a naturalization proceeding, nor has appellant pointed out any difference. His Point I. A. is simply that the evidence must be clear and convincing.

B. "Fraud, to Justify a Court of Equity in Setting Aside a Judgment, Must Be Extrinsic."

The extrinsic fraud doctrine as advanced by appellant is not applicable to proceedings under Section 15 for cancelling certificate of naturalization.

In *U. S. v. Ness,* 245 U. S. 319, the Court by Mr. Justice Brandeis says, at p. 325, "The remedy afforded by

Section 15 for setting aside certificates of naturalization is broader than that afforded in equity, independently of statute, to set aside judgments, *United States v. Throckmorton,* 98 U. S. 61; *Kibbe v. Benson,* 17 Wall. 624; but it is narrower in scope than the protection offered under Section 11." If this is not so, then just what does Mr. Justice Douglas mean in the second paragraph of his opinion discussing Section 15 of the Nationality Act, now Section 338 of the Nationality Act and Section 738 of Title 8, U. S. C. A., when he defines fraud as connoting perjury, etc. What fraud is he talking about? Obviously such fraud as is ground for cancelling a certificate of naturalization. Furthermore, the majority opinion at p. 1252 refers to the kind of fraud which traditionally violates judgments by citing *U. S v. Throckmorton,* 98 U. S. 61, and *Kibbe v. Benson,* 17 Wall. 624, and says that the Court is not considering that question.

C. "The Evidence Is Wholly Insufficient to Establish Extrinsic or Any Fraud of Any Kind."

That portion of this point as to extrinsic fraud has been answered above.

Fraud has been clearly and convincingly shown by summary of evidence herein set forth above in that appellant did not forswear in truth and fact allegiance to The German Reich in favor of the United States and was not attached to the principles of the Constitution, for no man of appellant's evident intellectuality could have had real allegiance to the United States or be attached to the principles of the Constitution, who by his own admission in open court stated in 1940 that "Hitler is all right; he is more capable of running the government than the way our government functions at this time" [R. 546], and that although "east is east, and west is west, * * * and that

white people should realize that fact and not go beyond their rights, and * * * attend to their own business, that nevertheless Germany should have the right to have land enough to sustain its 80 million people." [R. 573-581.] These things are admitted by appellant. When to this is added the declarations of appellant, many of them coupled with expressive action and demeanor, to others before the trial, ranging in time from 1929 to and including the time of the trial of this action, all of which the trial court believed to have been said and done by the appellant, fraud is certainly proved clearly and convincingly.

To whom must it be clear and convincing? The answer is that it must so appear to the trial court, but not to the appellate court, as outlined under Point I of Government's argument above. However, the appellate court remains free to draw ultimate inferences and conclusions which, in its opinion, the findings reasonably induce.

Appellant makes much of his apparent frankness. The answer is that the old adage of "all saint without but all devil within" is perhaps more applicable to our modern sabateurs, confidence men and others of that ilk than ever before. The trial court saw and heard the appellant, and having so seen and heard, judged him.

This brief cannot either exceed or equal the clarity and pungency of the trial judge's opinion in delineating the falsity of appellant's statements and actions. Appellant having had for study and perusal his application for citizenship, he changes his mind about bearing arms against Germany twice in fifteen minutes. The Court's cross-examination of appellant reflected in the record, pp. 573-581, on German colonization is most illuminating of appellant's mental attitude, not only at the time he was

naturalized, but also at the time of the trial. Honest allegiance to a country is not switched from one to another overnight. All reason and experience is against crediting such a thing. Why should it be believed then that appellant honestly refused at 9 a. m. on a given day to bear arms against Germany yet was at 9:15 a. m. the same day ready and willing to do so? It is respectfully submitted the time element involved concerning Government's Exhibit 1 is alone an unsurmountable barrier to the belief of appellant's sincerity.

Appellant's Point II.

"The Evidence Is Wholly Insufficient to Establish That Appellant Obtained His Certificate of Naturalization Illegally."

Th Government contended at the trial and still does that the actions and declarations of appellant as summarized were false as to his oath, which constituted fraud. If fraud, then irrespective of the trial court's alleged lack of clarity in concluding that appellant obtained his certificate of naturalization illegally, the certificate was procured illegally. This does not mean the illegal procurement as set forth in the statute authorizing suit for cancellation, but that fraud is illegal. Appellant claims the instant case is strikingly parallel to the *Schneiderman* case. Obviously it is not, if our analysis of the *Schneiderman* case is correct, because no misrepresentation of attachment was alleged or considered in the *Schneiderman* case. The issue in the *Schneiderman* case was very limited. Here the issue of fraud grants wider latitude in the consideration of evidence, so that acts subsequent to taking the oath are material probative force on the question of fraud. As to the sufficiency of the evidence to support the Court's findings, that is answered above.

Appellant's Point III.

"Appellant, After Being Admitted to Citizenship, Had the Constitutional Right to Exercise Freedom of Thought and Speech."

The Government concedes the law as so expounded. However, that is not the point. The appellant is not precluded from free speech, but is only liable to have it shown that such speech may reflect a state of mind in the past opposed to what he claimed it to be in the past.

Appellant's Point IV.

"Appellant Was Entitled to a Judgment of Dismissal at the Close of Appellee's Case in Chief."

Unless the Government reiterates much of the foregoing, it must, and does, categorically deny the conclusions of Appellant's Point IV.

Appellant's Point V.

"Appellant Was Entitled to Findings on His Affirmative Defenses."

If the rule as to findings of fact is as enunciated by Appellant, the trial courts would be called upon to find not only that two and two make four, but to also find that two and two do not make any other sum excepting four. The matters appellant contends should have received the benefit of findings are not ultimate facts and never were issues but evidence pleaded by him in his Answr. Findings are required not on the truth or falsity of evidentiary details, but on ultimate facts.

Gay Ganes Inc. v. Smith, May 28, 1943, 7th Cir.;

Brown Paper Mill Co. v. Irvin, 134 F. (2d) 337.

In the instant case, even if the findings themselves fail to give full information to the Appellate Court, the record contains the formal opinion of the trial judge which details facts and conclusions. This failure of the findings then results in nothing but harmless error, if error at all.

U. S. v. Aluminum Co. of America, U. S. D. C. (S. D. N. Y.), December 17, 1941;

5 Fed. Rules Serv. 52a.11, Case 3, Department of Justice, Bulletin No. 137;

Knapp v. Imperial Oil & Gas Products, 130 F. (2d) 1.

It has been held that even failure of the trial court to state separately its findings of fact and conclusions of law is not ground for reversal if the *opinion* of the Court below affords a clear understanding of the basis of the decision and resolves the major factual issues.

Hazeltine Corp. v. General Motors Corp., 131 F. (2d) 34;

Minnesota etc. v. Coe, 125 F. (2d) 198;

Goodacre v. Panagopoulos, 110 F. (2d) 716.

Conclusion.

It is respectfully submitted that the judgment of the District Court should be affirmed.

CHARLES H. CARR,
United States Attorney,
JAMES L. CRAWFORD,
WM. W. WORTHINGTON,
Assistant U. S. Attorneys,
Attorneys for Appellee.

APPENDIX.

Statutes.

Natural Proceedings in General.

United States Code, Title 8:

"Sec. 372. Proceedings for naturalization. An alien may be admitted to become a citizen of the United States in the manner indicated under sections 372 to 394 of this title and not otherwise." (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596.)

"Sec. 373. Declaration of intention. He shall declare on oath before the clerk of any court authorized to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is *bona fide* his intention to become a citizen of the United States and to reside permanently therein, and that he will, before being admitted to citizenship, renounce forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty, and particularly, by name, to the prince, potentate, State or sovereign of which the alein may be at the time of admission a citizen or subject. Such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien. No declaration of intention or petition shall be made outside of the office of the clerk of court." (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596; Mar. 4, 1929, c. 683, Sec. 1, 45 Stat. 1545.)

"Sec. 379. Petition for naturalization; when required to be filed; allegations; verification by citizen witnesses. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife, and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided,* That if he has filed his declaration before June 29, 1906, he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is

his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

As to each period of residence at any place in the county where the petitioner resides at the time of filing his petition, there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character." (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596; Mar. 2, 1929, c. 536, Sec. 6(a), 45 Stat. 1513.)

"Sec. 381. Oath renouncing foreign allegiance and to support Constitution and laws. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596.)

"Sec. 382. Prerequisite to admission to citizenship; residence; character; attachment to principles of Constitution; proof. No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this section he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county where the petitioner resides at the time of filing his petition, and the other qualifications required by this section during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by section 379 of this title to be included in the petition. If the petitioner has resided in two or more places in such county and for this reason two witnesses cannot be procured to testify as to all such residence, it may be proved by the oral testimony of two such witnesses for each such place of residence, in addition to the affidavits required by section 379 of this title to be included in the petition. At the hearing, residence within the United States but outside the county, and the other qualifications required by this section during such residence shall be proved either by depositions made before a naturalization examiner or

by the oral testimony of at least two such witnesses for each place of residence. * * * (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596; Mar. 2, 1929, c. 536, Sec. 6(b), 45 Stat. 1513.)

"Sec. 398. Final hearings to be in open court." (June 29, 1906, c. 3592, Sec. 9, 34 Stat. 599.)

"Sec. 399. The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings." (June 29, 1906, c. 3592, Sec. 11, 34 Stat. 599.)

Denaturalization Proceedings.

"Sec. 738. Revocation of naturalization.

(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

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(Section 338 of the Nationality Code, Oct. 14, 1940, c. 876, Title I, Subchap. III, Sec. 338, 54 Stat. 1158, United States Code, Title 8, Sec. 738.)

"Sec. 701. Jurisdiction to naturalize.

(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: Districts Courts of the United States now existing * * * in any state * * *. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdiction of such courts * * *.

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(Oct. 14, 1940, c. 876, Title I, Subchap. III, Sec. 301, 54 Stat. 1140, United States Code, Title 8, Sec. 701.)